88-908

Supreme Court, U.S.
FILED
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JOSEPH E. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

RAY TURKS, JR.
Petitioner,

V.

United States Postal Service
Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

RAY TURKS, JR.
1123 Amelica
St. Louis, Missouri 63107
A/C314-241-1054

QUESTIONS PRESENTED

The question are:

1. Was the evidence adduced against petitioner good enough to sustain a judgement beyond a resonable doubt?

2. Was Petitioner deprived of a fair trial and due process of law and his First and Fifth Admendment Right's to compulsory process by the U. S. Court of Appeals for the Federal Circuit decision not to permit petitioner to testify?

3. Was the Petitioner deprived of a fair trial and due process of law by the U. S. Court of Appeals for the Federal Circuit being unable to secure transcript from the outset due to pauper status?

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IN THE
SUPREME COURT of the UNITED States

October Term, 1988

RAY TURKS, JR.
Petitioner,

V.

United States Postal Service,

Respondent,

PETTION FOR WRIT OF CERTIORARI TO THE UNITED COURT OF APPEALS FOR THE FEDERAL CIRCUIT .

The petitioner, Ray Turks, Jr., respectfully prays that a writ of certiotari issue to review the judgement of the United States Court of Appeals for the Federal Circuit on 12 January 1988.

OPINIONS BELOW

The Court of Appeals entered its Memorandum decision affirming the Merit Systems Protection Board, Docket No. SL07528710028 on 12 January 1988.

The Court denied petitioner's request to appear as to statement of defense.

Said request was ignored by the United States Court of Appeals for the Federal Circuit.

JURISDICTION

United States Courts of Appeals for the Federal Circuit 5 U.S.C. &7703.

The judgement of the United States Court of Appeals for the Federal Circuit entered on January 12, 1988. The jurisdiction of this Court is invoked under 5 U.S.C. & 7703 (c) (1982). (Appendix E)

CONSTITUTIONAL PROVISION INVOLVED

The statues involved are set forth in pertinent part in Appendix F. They are:

The First and Fifth Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

On 12 January 1988, a panel of the United States Court for the Federal Circuit affirmed the Appeal from the MSPB 1/.

There findings were based on ...1/

5 U.S.C. 7703 (c) (1982) cited on page 3 of Judgement dated 12 January 1988.

1. 1/ Merit Sysystems Protection Board Case No. SL07528710028.

2. 1/ The government asserts that because Mr. Turks has not provided this court with a transcript of the hearing , "he cannot now challenge the presiding official's findings of fact and the presiding official's for (sic) factual determinations should be accorded finality. "No authority is cited for this restraint on an appellant. Mr. Turks' statutory burden may be harder to meet without a transcript, but his right to challenge the factual determinations is establised by law.

REASONS FOR GRANTING THE WRIT

Where petitioner from the outset lack of funds and knowledge did not receive his full rights to direct appeallate review, due process demands that his judgement be vacated.

Arthur Whitmore, Jr. V. US Postal Service CH07528410265 April 6, 1984 -Arbitration ruling favorable to appellant in that removal to be too harsh a penalty.

Douglas V. Veterans Administration, MSPB Order No. AT075299006 (April 10, 1981) the Board

set forth its authority to modify what it finds to be unreasonable penalties imposed by the agencies.

Greorio Natividad V. Department of Agriculture (Docket No. SF075299070) April 22, 1981 - favorable to appellant's that the record did not support the charges upon which appellant's removal was based by a preponderance of the evidence.

Petitioner' cited the above-mentioned from its inception but it fail to a deaf hear.

CONCLUSION

For the foregoing reasons, petitioner Ray Turks, Jr., respectfully requests that writ of certiorari issue to review the judgement of the United States Court of Appeals for the Federal Circuit.

Respectfully submitted this 26th day of November 1988.

RAY TURKS, JR.
Petitioner
1123 Angelica
St. Louis, Missouri 63107
A/C 314-241-1054

CERTIFICATE OF SERVICE

I, Ray Turks, Jr., say that on this date Nov-29, 1988, that I have deposited in the United States Mail Service, located at St. Louis, Missouri one (1) true copies of the entire contents of all of the foregoing booklets, addressed to:

The Solicitor General Office (1)
Washington, DC 20541

The Counsel U.S. Postal Service (3)
Washington, DC 20500

in a duly franked envelope.

Ray Turks

RAY TURKS, JR.,
Petitioner

Darlene Price, Notary
November 29, 1988

My Commission Expires April 26, 1989

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APPENDIX A

CONSTITUTION
of the
UNITED STATES OF AMERICA

AMENDMENT 1

Congress shall make no law respecting an establishment of religion, or probhibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor hsall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX B

United States Court of Appeals for the Federal Circuit

87-3536

RAY TURKS, JR.,

Petitioner,

V.

UNITED STATES POSTAL SERVICE,

Respondent,

Judgment

ON APPEAL from the Merit Systems Protection Board

in CASE NO (S) SL07528710028

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED: AFFIRMED

ENTERED BY ORDER OF THE COURT

DATED JAN 12 1988 FRANCIS X. GINDHART, Clerk /s/
Francis X. Gindhart, Clerk

ISSUED AS A MANDATE: FEB 3 1988

APPENDIX C

Note: This opinion has not bee prepared for publication in a printed volume because it does not add significantly to the body of law and it not of widespread legal interest. It is a public record. It is not citable as precedent. The decision will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

87-3536

RAY TURKS, JR.,

Petitioner,

V.

UNITED STATES POSTAL SERVICE,

Respondent,

DECIDED: January 12, 1988

Before NEWMAN, ARCHER, and MAYER, Circuit Judges.

PER CURIAM.

DECISION

The decision of the Merit Systems Protection Board, Docket No. SL07528710028, affirming the decision of the United States Postal Service, is affirmed.

APPENDIX C-2

OPINION

Mr. Turks held the position of Postal Service Tractor Trailer Operator. He was discharged on the grounds that he had failed to operate his vehicle in a safe and proper manner, and had submitted a false accident report.

The administrative judge heard testimony of the Postal Service personnel who visited the s - cene shortly after the incident was reported and who had taken photographs, a nurse who saw Mr. Turks after the incident, and Mr. Turks himself. The administraive judge found that Mr. Turks drove his vehicle in an un-safe manner; that he was in a single-vehicle accident as charged; that he was under the influence of alchol when he returned to the Post Office; and that he in- tentinally falsified the accident report.

The administrative judge found Mr. Turks' version of the accident, i.e., that his vehicle was struck by stones that were dropped from a highway overpass, "to be virtually devoid of evidentiary support, somewhat tainted by his

dmissions, and, most significantly, not very ersuasive," and described the testimony of the ostal Service witnesses as "straight-foward". redibility determinations are the province of he presiding official, Kumbferman v Department f the Navy , 785 F. 2d 286, 290 (Fed. Cir. 1986), nd must be sustained unless clearly unsupported.

The board held that Mr. Turks' misconduct ffected the efficiency of the service and that he penalty of removal was reasonable in view f the seriousness of the offense. We have eviewed the submissions of the parties, and onclude that the decision of the board is not rbitrary, capricious, an abuse of diseretion, r otherwise not in accordance with law; or btained without procedures required by law, ule, or regulation beaving been followed; or nsuppoted by substantial evidence.[1/] 5 U.S.C. 703 (c)(1982).

/ The government asserts that because Mr. Turks as not provided this court with a transcript of the earing, "he cannot now challenge official's for sic/ factual determination should be accorded inality".

No authority is cited for this restraint on an appellant. Mr. Turks'statutory burden may be harder to meet without a transcript, but his right to challenge the factual determinations is established by law.

APPENDIX D

BRIEF of

Ray Turks, Jr., Petitioner v. United States Postal Service Respondent	)	87-3536 6 April 1988

BEFORE

Supreme Court of the United States
1 First Street, N. W.
Washington, D.C. 20543

ISSUE

Was the decision by the United States Court of Appeals for the Federal Circuit of 12 January 1988 proper.

I think not.

APPENDIX D-2

FACTS

Under opinion on page 2 of the United States Court of Appeals for the Federal Circuit paragraph 1 citing "he was under the influence of alcohol when he returned to the post office" was a gross err.

The initial decison of the MSPB dated 6 Feb 1987 on page 11 paragraph 2 and page 12 paragraph 2 & 3 5.U.S.C. 7701 (c) (1) (B) and 5 U.S.C. 7701 (C) (2) (B) whereas the agency could not support"inluence of Alcohol" in that record of sobriety gest being given petitioner.

Mitigating circumstance prevail from the outset in that the agency did not enter in as evidence Sobriety Test Report; Missouri Work Report, Emergency Room Report; past disciplinary Record of petitioner. Article 35 Alcohol And Drug Recovery Programs Agreement between United States Postal Service 21 Jul 1984-20 Jul 1987 And Article 16 Discipline Procedure Section 16.1 Statement of Principle -Agreement between United States Postal Service 21 Jul 1984-20 Jul 1987.

APPENDIX D-3

Petitioner retired from the U. S. Army after 20 years believe that his rights were violated under the First and Fifth Amendment of the Constitution of the United States of America. Garfield Cade,Jr. v United States Postal Service (Docket No. SF07528010370) November 24, 1981; Arthur Whitmore, Jr. V. U.S. Postal Service CH07528410265 April 6,1984 , Gregorio Natividad V. Department of Agriculture (Docket No. SF075299070) April 22,1981, Aaron M. Farris V. U.S. Postal Service (Docket No. AT0752811012 February 22, 1983, Albert V. Chafee 571 F. 2d 1063, 1068 (9th Cir. 1978), Jacobowitz V. United States 424 F 2d 555, 563 (CT Cl 1970).

Footnote 1/ 5 U.S.C. 7703 (c) (1982) on page 3 of the United States Court of Appeals for the Federal Circuit not take in account that due to migtigating circumstance surrounding petitioner' from the outset were that he was in a (Non-Pay Status) but remain on the roll until disposition of the case has been either by settlement or throught exhaustion of his MSPB appeal.

Being in (Pauper Status)petitioner was

unable to compensate the MSPB Contract Court Reporting Service for copy of the transcript needed to appeal the MSPB Administrative Judge initial Decision of 6 February 1987. 5 C.F.R. 731 202 (c) ; Howard v. United States Mo. Civ. LV-77219 RDF (D. Nev. Jul 3 1980) (Mem Order AT 10); Masino v. United States, 589 F 2d 1048, 1055-56 (CT. Cl 1978).

Petitioner pray that the Supreme Court of the United States vacant the Decision by the United States Court of Appeals for the Federal Circuit.

RAY TURKS, JR., /s/
Petitioner
1123 Anglica
St. Louis, Missouri 63107

APPENDIX E

United States of America
Merit Systems Protection Board

RAY TURKS, JR., Appellant, V. US.POSTAL SERVICE, Agency	DOCKET NUMBER SL07528710028 DATE: AUG 04 1987

Robert H. Quinones, St. Lous, Missouri, for the Appellant,

Donald L. Baker, St. Louis, Missouri for the agency,

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman
Dennis M. Devaney, Member

ORDER

After full consideration, the Board DENIES the appellant's petition for review of the initial decision issued for review set forth at 5 C.F.R. 1201.115. The initial decision in this appeal is now final. 5 C.F.R. 1201.113 (b).

APPENDIX E-2

NOTICE TO APPELLANT

You may petition the United States Court of Appeals for the Federal Circuit to review the Board's decision in your appeal if the court has jurisdiction. 5 U.S.C. 7703. The address of the court is 717 Madison Place, N. W. Washington, D.C. 20439. The court must receive the petition no later than thirty days after you or your representative receives this order.

FOR THE BOARD:

ROBERT E. TAYLOR /s/
Clerk of the Board

Washington, D. C.

APPENDIX F

ADDENDUM

RAY TURKS, JR., Appellant v. U.S. POSTAL SERVICE Agency	Docket Number SL07528710028 Date: 2 April 1987

PETITION FOR REVIEW

BEFORE

UNITED STATES OF AMERICA MERIT SYSTEMS PROCTECTION BOARD

Appellant believe that certain inequites (See 5 C.F.R. 1201.151(b)) existed during the MSPB hearing prior to the initial decision of 6 Feb. 1987.

Appellant had made motion for two (2) witnesses on his behalf (Lewis and Victor Kirkpatrick) whereas Lewis Lee allowed to give testimony thus witness Victor Kirkpatrick testimony excluded. See Certify document dtd 27 Feb 87.

Appellant believe that this certify document is paramount to the Appeal whereas Chapter and

and Verse of the MSPB 5 C.F.R 1201 not adhere to. See 5 C.F.R. 1201.73; 5 C.F.R. 1201.57, 5 C.F.R. 1201.62, 5 C.F.R. 1201.56, 5 C.F.R. 1201.73, 5 C.F.R. 1201.114, 5 C.F.R. 1201.115 (b) and Albert v. Chafee 571 F. 2d 1063, 1068 (9th Cir. 1978), Jacobowitz v. United States, 424 F. 2d 555, 563 (CT Cl. 1970).

Appellant pray that this Addendum Petition for review 5 C.F.R. 1201.114 be given consideration as to the Appeal dated 25 March 1987. See Exec. Order 9830 of Feb 24, 1987 01.2(d), 3 C.F.R. 608 (1943-1948 Comp.).

FOR THE APPELLANT:

Encl: Certify Document dtd 25 Feb 87

ROBERT H. QUINONES/s/
Appellant's Representative

2225 Lindsay Lane
St. Louis, Missouri 63031-5626

APPENDIX G

RAY TURKS, JR., Appellant, V. US.S. POSTAL SERVICE Agency	Docket Number SL07528710028 Date: 25 March 1987

PETITION FOR REVIEW

BEFORE

UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD

Pursuant to 5 C.F.R. 1201.114 objections to the MSPB Initial Decision of February 6, 1987 hereto noted: Appellant believe removalby the agency to harsh a penalty for the situation/ circumstance.

Mitigating circumstances are the fact that the agency from the outset cited that appellant was under the influence of alcohol whereas this matter was never proven.

APPENDIX G-2

No sobriety test given appellant to ascertain this. While under due stress appellant made out PS Form 91 (Accident Report).

Appellant (IOD) Injury on Duty not cited in Agency Response Tabbed File dated 10 Nov 86.

Not allowed to initially select a physician or hospital.

SF-46 suspended and revoked prior to Fact Finding Report Recommendation.

Remained on duty while injured and visited hospital for treatment after tour ended.

Picture's of accident site identification questioned.

Appellant's first set of iterrogatories dated 25 Nov 86 as to agency interrogatories dated 12 Dec 86 changed or failed to answer fully. See 5 C.F.R. 1201.73

Prior to removal appellant had no past disciplinary action. Douglas v. Veterans Administration 5 MSPB 280 (1981). On page 14 Initial Decision citing four past disciplinary action used in selecting the appropriate penalty thus appellant had none believe this to be in

APPENDIX G-3

See 5 C.F.R. 1201.56 (c) (3); See Garfield Cade Jr. v. United States Postal Service (Docket No. SF07528100370) November 24, 1981,Arthur Whitmore, Jr., v. U. S. Postal Service CH075284-10265 April 6, 1984, Rufus M. Combs v. U. S. Postal Service Docket No. DA075209178; Gregorio Natividad v. Department of Agriculture (Docket No. SF075299070) April 22, 1981, Arrow M. Farris v. U. S. Postal Service Docket No. AT 0752811012, Edmund A. Relthmaier v. Department of The Air Force (Docket No. DA075299021) May 5, 1981, Phillip T. Riggin v. Department of Health And Human Services, Social Security Adminidtration (Docket No. PH07528010273) May 4, 1981, Oscar L. Bowers v. U. S. Postal Service Docket No. AT075209258, Joseph Person v. United States Department of Agriculture (Docket No. CH075209116) February 10, 1981,Chalres R. Johnson v. Government Printing Office (Docket No. DC075209003) April 15, 1981, and Byrd v. Campbell, 591 F.2d 326, 331-32 (5th Cir. 1979), Boyce v. United States 543 F.2d 1290 (CT. Cl 1976).

APPENDIX G-4

Paragraph 2 page 12 of Initial Decision "I find that the Agency's Charge is Supported by the Preponderance of the evidence and it is sustained. 5 U.S.C. 7701(c) (1)(b)" Appellant finds this to be be in err. See 5 C.F.R 1201. 56 (c)(3).

Paragraph 3 page 10 of Initial Decision Nurse Williams testimony "Appellant had a strong smell of alcohol on his breath, his eyes were red, and that he appeared to be under the influence of alcohol" Appeallant finds this to be in err. See 5 C. F. R. 1201.56 (c)(3) and Oscar L. Bowers, v. U. S. Postal (Docket No. AT075209258).

COLLECTIVE BARGAINING AGREEMENT

ARTICLE 35

ALCOHOL AND DRUG RECOVERY PROGRAMS

SECTION 35.1 PROGRAMS

The employer and the Unions espress strong support for programs of self-help. The Employer shall provide and maintain a program which shall encompass the education identification, referral, guidance and follow-up of those employees afflicted by the disease of Alcoholism. When an employee is referred to PAR by the Employer, the PAR Counsellor will have a reasonable period of time to evaluate the emplployee's progress in the

program. The parties will meet at the national at least once every six months to discuss existing and new programs. This program of labor-management cooperation shall support the continuation of the PAR Program at the current level. In addition, the Employer will give full consideration to expansion of the PAR Program where warranted.

An employee's voluntary participation in such programs will be considered favorbly in disciplinary action proceedings.

Statement of Nurse Brenda Williams in Agency Tabbed File #10 shows no date to Tony Hospkins MVO Dept. MPO"He appeared to be under the influence of Alcohol, Drug, or on need of psychiatric Care" Appellant view these remarks as arbitrary and capricious and is in err. See 5 C.F.R 1201.56 (c) (3). See Arthur Whitmore, Jr., v. U.S. Postal CH07528410265 April 6, 1984.

Nurse Williams stated " He had small particles on his arms which he stated was glass & had an abrasion on his rt elbow stated there was glass within. Appellant had sustained a job related injury and nurse Williams was aware of same. See 5 C.F.R. 1201.56 (c) (3).

Statement of Supervisor Reginald Speed dtd 11 Jul 86 in Agency Tabbed File #12 "At 2:30 PM, Mr. Turks arrived at the Main Post Office and came to me. He had glass on him and requested

to go to the First Aid Unit. I Sent him to the First Aid Unit. At Approximately 2:45 PM, the First Air Unit called me back and stated that Mr. Turks had no injuries, but they going to send him to the hospital". This is in err. See 5 C.F.R. 1201.56 (c)(3).

Supervisor Speed acknowledge that Appellant had sustained a Job Related Injury by signing U.S. Department of Labor (CA-1) See Attached CA-1 dtd 5 Jul 86.

Supervisor Speed checked Box 36 that appellant injury was not caused by willful misconduct nor intoxication or intent toinjure self or another also he checked Box 41 that support appellant injury of 5 Jul 86. See 5 C. F. R. 1201.56 (c)(1).

Immediate Supervisor Speed made no mention th-at appellant under the influence of alcohol.

Attached forms-VA Form 10-2577d, VA Form 10-1000a, Federal Personnel Manual 810-17 Sub-chapter 5-1 Medical Care a (3). Lutheran Medical Center of St. Louis, Main Post Office Appointment Card, USPS/Health Unit dtd 7/7/86.

USPS/Health Unit dtd 6/5/86/.

By Letter dtd 9 Jul 86 Agency Tabbed File #11 Superintendent Vehicle Operations Unit Jesse D. Martin temporarily suspended appellant SF-46.

By Letter dtd 16 Jul 86 Agency Tabbed File #15 Superintendent Vehicle Operations Unit Jesse D. Martin revoked appellant SF-46.

This action by Superintendent Jesse D. Martin is improper and procedure defective in that the Fact Finding Report in Agency Tabbed File #16 was not finalize till 21 Jul 86. Appellant believe this to be in err. See 5 C.F.R. 1201.56 (c)(3).

Collective Bargaining Agreement

(Memo 193)

1. The safety and health of employees is of significant concern to the parties signatory in this Memorandum of Understanding, According, the parties further agree that the following is not intended to provide driving privileges to an employee when such privilege would place the safety of the public or the employee at risk.

2. The mere fact that an employee was involoved in a vehicle accident is not sufficient to warrant automatic suspension or revocation of driving privileges or the authomatic application of discipline.

3. When an employee's SF-46 is temporarily

suspended as a result of a vehicle accident, a full review of the accident will be made as soon as possible, but not later than fourteen (14) days, and the employee's SF-46 and driving privileges must either be reinstated, suspended, or revoked as warranted, if the decision is to suspend or revoke the employee's SF-46, the employee will be provided, in writing, the reason (s) for such action.

4. This Memorandum of Understanding is not intended to define the conditions or circumstances for which an employee's SF-46 may be suspended or reovked.

Date: October 17, 1984; incorporated into December 14, 1984.

Appellant documents as to the Medical Statement dated 5 Jul 86 were omitted from Agency Response Tabbed File dated 10 No 86 thus Initial Decision page 12 paragraph 2 cited that "I find that the Agency's charge is supported by the preponderance of the evidence and it is sustained". Appeallant believe this to be untrue and is in err. See 5 C.F.R. 1201.56 (c)(2)(3).

Further Deloch and Dewit in Initial Decision page 11 paragraph 2 citing appellant under the influence of alcohol along with nurse Williams was not supported by a sobrierty test. This is in err. See 5 C.F.R. 1201.56 (b)(1)(c)(1)(2)(3).

APPENDIX G-9

Fact Finding Report #192/86 dated 21 Jul 86 in Agency Tabbed File #16 under INJURIES/ failed to include the appropriate medical statement's whereas said report was not fully develope as to the imjury to the appellant. This is in err for proper procedure not followed as to Chapter and Verse of Memo 193 and Article 29. See 5 C.F.R. 1201.56 (b)(1)(3)(c)(3).

Since Mr. Moselle Deloch, Supervisor, Vebicle Dispatching participated in appellant accident report then the question is where is his tatement? Appellant believe this is in err. See 5 C. F. R. 1201.56 (b)(1)(c)(1)(2)(3).

Statements' Nurse Williams, Supervisor Speed, and Notice of Charge-Removal, Letter of Decision all cited influence of alcohol but none cited appellant injury clearly constitute discriminatory employment practice and disparity to appellant.

Also this type of action by the Agency clearly shows inconsistencies in the Agency Response Tabbed File dtd 10 Nov 86.

Under these particular circumstance in this

case I find that the Agency has not carried its burden of demonstrating that removal was reasonable.

The following named employees all falsified and were allowed to remain in employment.

Mr. R. Moentman, W/M Mail Handler STL MPO (1981)

Mr. N. Barnes, B/M Mail Handler STL MPO (1981)

Mr. D. Jones, W/M Supervisor TT (1973) Intoxicated.

Interrogatiories dtd 12 Dec 86 of Agency Tractor Trailer Operator allowed to change to non-driving due to accidents' effective 27 Oct 81 this not allowed to appellant is disparate treatment. (Julius A. Carter, Jr.).

Rufus Williams, Jr. Tractor Trailer Operator allowed tochange to non-driving this not allowed to appellant is disparate treatment.

The agency did not give consideration to all factors involved in deciding what penalty was appropriate, including not only the gravity of the offense but other matter as mitigating circumstsnces.

APPENDIX G-11

FOR THE APPELLANT:

ROBERT H. QUINONES/s/
Appellant's Representative

2225 Lindsay Lane
St. Louis, Missouri 63031-5626

A/C 314-921-6337

Encls:

1. US Dept. Labor (CA-1 dtd 5 Jul 86).
2. VA Form 10-2577d dtd 5 Jul 86 (Prescription Form).
3. VA Form 10-1000a dtd 5 Jul 86 (Abbreviated Medical Record).
4. Medical Unit Appointment Card no dtd STL/MPO.
5. STL/Health Unit USPS dtd 6/5/86.
6. ST/Health Unit USPS dtd 7 Jul 86.
7. Lutheran Medical Center of St. Louis.
8. Federal Personnel Manual 810-Sub-Chapter 5.

APPENDIX H

RAY TURKS, JR., Appellant, V. U.S. POSTAL SERVICE, Agency,	DOCKET NUMBER SL07528710028 DATE: FEB 6 1987

Stanford Richardson, Jr., Esquire, St. Louis, Missouri for the appellant

Donald L. Baker, for the agency.

BEFORE

Dupree P. Heard
Administrative Judge

INITIAL DECISION

By petition timely filed, appellant appealed the action of the agency removing him from the position of Tractor Trailer Operator, effective September 29, 1986. As a preference eligible in the U. S. Postal Service with more than one year of current continous service in the same or similar position, appellant is entitled to

to appeal his separation to the Merit Systems Protection Board (the Board). 5 U.S.C. 7511 (a)(1)(B),7701.

For the reasons set forth below, the agency's removal action is AFFIRMED.

ANALYSIS AND FINDING

The agency charged appellant with submitting a false accident report and failing to operate his vehicle in a safe and proper manner on July 5, 1986. Appeal File (AF), Tab 6, Subtab 22. The agency claimed that appellant's Operator's Report of Motor Vehicle Accident (SF 91) dated July 5, 1986, is false. The report reads as follows:

> I left AMF (Air Mail Facility) app. (sic) 1230 hrs traveling East on I-70. Returning to the Main Post Office at the overpass at West Florissant, someone droped (sic) some stone from the overpass causing damage to the vehicle which I was driving, upon impact I swerved to the right and hit a road marker.

AF. Tab 6. Subtab 8. During the Board hearing, the agency produced supervisor Mozelle Deloch and Vehicle Operations Analyst Randy W. Dewit, as witnesses.

APPENDIX H-3

See testimony of Mozelle Deloch and Randy W. DeWit, tapes 3, 4 and 5, sides 1 and 2. Deloch and DeWit testified that during their ivestigations on July 5, 1986, they determined that appellant had a single-vehicle accident at the North Hanley Road exit and Interstate 70. Deloch and DeWit stated that their investigations did not show that an accident had occurred at the West Florissant or Taylor overpasses and Interstate 70 as alleged by appellant. Deloch and DeWitstated that they found no rocks or stones in the area that were large enough to cause the extensive amount of damage that had occurred to the Postal Service vehicle. Deloch and DeWit related that a fourteen-foot high and six-foot wide steel road sign had been knocked down at the North Hanley Road exit and that the available evidence supported their conclusion that appellant had a single-vehicle accident at that exit. Deloch and DeWit also related that they did not see a damaged road marker at the West Florissant or Taylor overpasses.

DeWit stated that appellant advised him that Donald Nisters had observed the accident. AF, Tab 6, Subtab 16. DeWit also related that he talked to Donald Nieters and was advised that while he (Nieters) was changing a flat tire on his automobile at the Aidelaide exit and Insterstate 70, appellant parked a Postal Service vehicle behind him. DeWit further related without dispute that Nieters told him that he had not seen any stones dropped on appellant's vehicle.

In his supplementary report dated July 7, 1986, appellant stated in part as follows:

> I arrived at the AMF at app. (sic) 1215 hrs. I was hot and feeling weak. I went into the bathroom and wash (sic) my face and was feeling fine. I departed about 1230 hours about five minutes after I left I began to feel dizzy andtired for about 2-3 minutes. I can't recall what I did. I pass (sic) out and hit something or something hit me. I don't know where it happen (sic) I think it was somewhere East on I-70. Before regaining full conscious (sic) of what I was doing or where I was at I though (sic) I was seeing people, flying glass and flying stones when I became fully aware of what I was doing. I was almost under the Florissant or Taylor overpass (sic) my tractor was headed for a guard rail, I straighted (si

it back out on the highway and came to a stop just East of the overpass while looking at the damage to my tractor, Mr. Donald Nieters came up. While talking to him, I understood him to say he saw items falling off the overpass. In my earlier confuss (sic) state of mind, that was the only thing that I could think of, that could havr happen (sic).

AF, Tab 6 Subtab 9. Appellant's testimony was very confusing and vague.Specifically, appellant testified that someone dropped some six-inch diameter stones on his vehicle from either the West Florissant or Taylor overpasses and he swerved to the right and hit a road marker. However, on cross-examination, appellant stated that he was "semi conscious" when the accident occurred and that he did not actually know ehat happened to his vehicle. See testimony of appellant, tapes 1 and 2, sides 1 and 2. Appellant stated that when he came to his "senses" he parked his vehicle behind Mr. Nieter's vehicle at the Aidelaide exit, about one mile from the West Florissant overpass. Further, appellant stated that he did not go back to look at the stones at the West Florissant overpass. Moreover, appellant stated that he really did not know if any stones had actually hit his vehicle. Appeallant stated that he

claimed that stones were dropped from the West Florissant or Taylor overpasses because Nieters had told him that "maybe" someone had dropped stones onto his vehicle. Neveretheless, on cross-examination, appellant conceded that Nieters had never told him that he had seen anyone drop stones on his Postal Service vehicle. Based on the testimony from DeWit and appellant, I find that Nieters did not observe anyone dropping stones on appellant's vehicle and he never told appellant that stones actually caused the damage to his vehicle.

In support of his case, appellant procduced Lewis Lee, Tractor Trailer Operator, as a witness. See testimony of Lewis Lee, tape 5, sides 1 and2. Lee testifed that the day after the accident, he and appellant went out to the West Florissant and Taylor overpasses and Interstate 70. Lee stated that there was debris, i.e., small rocks, glass, etc., in the areas. Lee also stated that there was a small road marker, measuring six inches by eight inches, laying off from the left side of the road under the West Florissant overpass.

However, Lee conceded that he had no idea where the road marker and the debris came from or how long the debris and other trash had been on the road. Lee further stated that he and appellant looked at the North Hanley Road exit area, but did not see any signs of an accident.

Deloch and DeWit testified that they saw and took photographs of the North Hanley Road exit area and they concluded from their personal obserbations that appellant's accident had occurred at that location. Agency's Hearing Exhibits 2 and 3. Deloch and DeWit explained that where the exit ramp separates from Interstate 70, it forms a "V" shape or penninsula until it reaches the crest of a hill at the North Hanley Road overpass. They also explained that the North Hanley Road sign, which was fourteen feet in height and six feet in width had been placed in the penninsula and anchored in concrete. They further explained that the steel legs which supported the North Hanley Road exit sign, measured fourt-and-three-quarter inches in width and that these steel legs had been broken off at ground level and were bent and twisted. Deloch and DeWit

related that tire marks were in the grass penninsula area which measured twenty-four inches in width and that the width of the tires on appellant's trailer was twenty-four inches in width. They also related that the road sign was found to be in several pieces. Agency's Hearing Exhibit 2. They further related that photographs were taken of theWest Florissant and Taylor areas, and stated that no signs of an accident were found, no large stones were found, and no six-inch by eight-inch road marker was found. Based on the photographs showing the extensive damage to appellant's tractor and trailer, I find that a small six-inch by eight-inch road marker could not have caused such-damage, even if appellant did hit the road marker as claimed. Agency's Hearing Exhibit 2.

Supervisors Reginald Speed, Sterling A. Hopkins, Mozelle Deloch and Vehicle Operations Analysts Donald D. Taylor and Randy W. DeWit, testified without dispute that the tractor-trailer vehicle driven by appellant on July 5, 1986, had the following damage:

> The postal vehicle sustained adented bumper on the left side of the tractor. The bumper was pushed back to a point where the bumper and the step below the passenger door meet. This dent or imprint extends from the bottom of the bumper and is clearly visible upward to the top of the cab. The imprint on the bumper and on the cab by thefront grill both measure 4 3/4 inches. The windsheild on the passenger side was smashed inward. The top of the cab, along the line of the imprint, was pushed in and down. As a result of the impact on the left windshield, the right windshield buckled and cracked. The largest portion of fragmented glass is directly in line with the imprint on the cab and bumper. On rither side of the line, the fragmentation is less severe. The rain channel on the rear of the cab is torn and dented. This tear is directly behind the damage on the front of the cab. ... On the passenger side of the trailer, a few feet back from the nose, was a hole approximately the size of a baseball. There were two gashes on the roof the nose of the trailer, approximately 18 inches apart. These were situated appeoximately in the middle. There were also long thin scratches behind the cab on the trailer (and)...at several damaged locations on the trailer, there was evidence of green paint.

AF, Tab 6, Subta 22. All of the supervisors and the Vehicle Operations Analysts stated that the extensive damage to appellant's vehicle could not have been made by stones being dropped on it. Concerning Louis Lee's statement that he did not see any signs of an accident at the North Hanley Road exit area the day after the

accident, supervisorHopkins testified without dispute that the Missouri Highway Department informed him that one of many maintenance crews had cleared away the property damage at the North Hanley Road exit. Accordingly, I find that prior to appellant and Lee going out to the North Hanley Road exit, a maintenance crew from the Missouri Highway Department had cleaned up the area. Accordingly, I find that this is the reason why appellant and Lee did not find the extensive wreckage from the accident as plainly revealed in the photographs taken on the day of the accident. Agency's Hearing Exhibit 2.

Based on the probative evidence of record, I find that accident that appellant had on July 5, 1986, occurred at the North Hanley Road Exit area. I find that the undisputed documentary evidence, expecially the photographs taken on July 5, 1986, and the testimonial evidence from Deloch and DeWit show that the same paint scrapings made from the North Hanleu Road exit sign, which was green in color, were found on appellant's trailer and tractor. I also find that the size and the

wide imprint in the front of appellant's tractor was the same size, i.e. fourt-and-three-quarter inches. I further find that tire imprints in the grass penninsula area at the North Hanley Road exit area measured twenty-four inches in width and that the width of the rear tires on appellant trailer was also twenty-four inches in width.

I note that the height of the North Hanley Road sign was fourteen feet and that the height and size of the North Hanley Road sign would account for the damage to the top rear of the tractor and the roof of the trailer, which was eleven feet, six inches in height. I also note that taken from the legs of the Hanley Road exit sign were two pieces of blue and white plastic, which matched the postal decal stripes on the front of the tractor. I further note that there were tire scuff marks found on the curbing at the Hanley road exit and that there were scuff marks on the rear tires of appellant's vehicle. However I find that the record evidence fails to show that there were scuff marks or tire tracks at either the West Florissant or Taylor areas. Further, I find that even if someone dropped some

stones on appellant's vehicle, as alleged, this would not have caused the extensive damage to his tractor and trailer,i.e., the damage to the front bumper of the tractor and the four-and-three-quarter inch wide imprint in the front of the tractor.

Based on the record as a whole, I find that it is more probably true than not true that on July 5, 1986, appellant left the road at Interstate 70 and the North Hanley Roadexit and jumped the c where he continued east, hitting the Hanley Road exit sign. I also find that as a result of this impact, the sign bent toward the tractor. I further find that one of the steel legs which supported the sign, caused an imprint from the front of the bumper of the tractor to the top of the tractor, causing damage to the nose of the tractor. Furthermore, I find that another part of the sign hit the roof of the trailer and cause a baseball size hole in it. Based upon the recor evidence, I conclude that appelant misrepresented his version of the accident and that he was solel responsible for the damage to his Postal Service

vehicle.

In addition, appellant testified that he had several alcoholic drinks six hours before arriving at work. Appellant subsequently changed his testimony and stated that he had alcoholic beverages eleven hours before reporting for work. Nevertheless, appellant asserted that he was not under the influence of alcohol on July 5.

Brenda Williams, Registered Nurse, testified that on the day in issue, appellant had a strong smell of alcohol on his breath, his eyes were red, and that he appeared to be under the influence of alcohol. See Brenda Williams, tape 2, sides 1 and 2; AF, Tab 6 Subtab 10. Williams stated that during the entire time that she attempted to assist appellant, he demonstrated hostility or made sexual advances toward her. Williams stated that she told appellant that if his improper behavior did not stop, Postal Service Security Officers would be summoned.

In light of the conflicting testimony from appellant and Williams, I must assess and weigh the probative value of each witnesses testimony. See

Borninkhof V. Department of Justice, 5 M.S.P.R. 77 (1981). First, I find that the record evidence contains substantial evidence which tends to corroborate Williams' version. Specifically, supervisor Deloch and Vehicle Operations Analyst DeWit stated that they smelled alcohol on appellant's breath. Deloch and DeWit indicated that they were a few inches away from appellant while talking to him. They also indicated that appellant appeared to be under the influence of alcohol, and that he was loud and argumentative. Based on the record evidence, I find that Deloch and DeWit had reasonable opportunities for making a determination as to whether appellant was under the influence of alcohol.

Lewis Leee testified that he did not smell any alcohol on appellant's breath. However, Lee did not offer an opinion concerning appellant was under the influence of alcohol. Lee stated that during most of the time that he was talking to appellant, he was eight or nine feet away, except

for a few seconds when he brused some glass off of him. Accordingly, based on Lee's statements, I find that he did not have a reasonable opportunity to make a determination concerning whether appellant was under the influence of alcohol.

Further, I find Willisms' testimony to have been clear, straight-forward, detailed and consistent with her prior contemporaneous written statement, concerning appellant's lack of sobriety. I also find that the statements from Deloch and DeWit corroborate Williams testimony. On the other hand, I find appellant's version and Lee's statement to some extent, to be vague and lacking in detail. I also find that appellant's version to be virtually devoid of evidentiary support, somewhat tainted by his admissions, and, most significantly, not very persuasive.

Accordingly, I find appellant deliberately and intentionally falsified his accident report, and that he failed to drive his vehicle in a safe and proper manner. Based on the record as a whole, I find that the agency's charge is supported by the preponderance of the evidence, and it is sustained. 5 U.S.C. 7701 (c)(1)(B).

APPENDIX H-16

Under 5 U.S.C. 7701 (c)(2)(B), nothwithstanding the fact that the agency met its evidentiary burden on the charge, its decision may not be sustained if appellant demonstrates that the action was taken because of prohibited discrimination. In his petition for appeal, appellant stated that:

> I was prejude (sic)removed from Postal Service two times for the same charges and now I'm being labeled as being unfir to work for the Post Office with my work record and education (sic) background I believe that no one have (sic) the rights (sic) to put that type of label on me because of the way I think.

AF, Tab 1. Appellant bears the burden of proving an affirmative defense by a preponderance of the evidence. See Pinto v. Department of Labor, 11 M.S.P.R. 442 (1982). While appellant has generally clsimed that the action was affected by prohibited discrimination, he nenver indicated the basis, i.e., race, sex, religion, etc., for such discrimination. Accordingly, I find that appellant has not not made a valid claim of discrimination. See Meehan v. U. S. Postal Service, 718 F.2d 1069 (Fed Cir. 1983).[1]

The agency's adverse action must also be "for such cause as will promote the efficiency of the service." 5 U.S.C. 7513(a). Here, I find that appellant's action of causing a single-vehicle accident and falsifying an accident report concerning the cause and location of his accident plainly constitutes such cause as effects the efficiency of the service. See Phillips v. Bergland, 586 F.2d 1007 (4th Cir. 1978).

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[1] In Meehan, 718 F.2d, at 1073, the court held that:

> In view of the full panpoly of procedures and protection ... which are conferred upon an employee. . . the basis for asserting discrimination should be expressly and unequivocally stated, and not be so worded as to require the Presiding Official to strain to suppy it.

The remaining issue is whether the action taken by the agency, removal, is within the parameters of reasonableness under all the facts and circumstances present. See Douglas v. Veterans Administration, 5 MS.P.R. 280 (1981). in the instant case, I find that appellant's falsification of his accident

report to be especially egregious in light of the position he held. In addition, supervisors Henry C. Voss and Starling A. Hopkins testified that as a result of appellant's serious misconduct, they had lost confidence in his ability to properly performs his duties. See tapes 2, 3 and 4, sides 1 and 2. They indicated that the agency is responsible for the safe and efficient delivery of mail to its customers and that appellant must be held to a high standard of trustworthinless and intergrity. I find that the seriousness of appellant's offense and the effect on the employer-employee relationship is significent. The charge against appellant in the instant case relates directly to his "reliability, veracity, trustworthinless (and) ethical conduct. . . ." See Embry v. Hampton, 470 F.2d 146, 147 (4th Cir. 1972).

Appellant further cited his three years of federal service and claimed that his removal demonstrate disparate penalty with respect to the discipline given to four other employees. The record evidence indicates that Rufus Williams,

Anthony White, Julius A. Carter and Walter E. Baker, were disciplined, i. e., issued removal letters, demoted or suspended, for speeding and failing to properly operate their vehicles. AF, Tab 11. Notwithstanding appellant's claim of disparate penalty, I find that all of the comparison employees were disciplined according to the magnitude of their misconduct. I also find that the record evidence fails to support a finding that any of the comparison employees fabricated stories concerning a single-vehicle accident or made misstatements concerning the location of an accident. Accordingly, I find that the comparison employees used by appellant do not show disparate treatment.

After a careful balancing of the relevant penalty factors, I find that the mitigating factors presented by appellant are plainly insufficient to militate against the penalty of removal imposed by the agency. Accordordingly, I find that the agency action, removal, was not unreasonable under all the facts and circumstances present.

APPENDIX H-20

See Book v. U. S. Postal Service, 675 F.2d 158, (8th Cir. 1982).

DECISION

The agency's action removing appellant is herey AFFIRMED.

REVIEW RIGHTS

This initial decision of the Merit Systems Protection Board will become a final decision of the Board on March 13, 1987, unless a petition for review is filed by that date or the Board repopens the case on its own motion. 51 Fed. Reg. 25157, 251159, (1986) (to be codified at 5 C. F. R. 1201. 113 and .117).[2] Any party or the Office of Personnel Management may seek to have it reviewed by the Board by filing a petition for review with:

Officeof the Clerk
Merit Systems Protection Board
1120 Vermont Ave., N.W.
Washington, D. C. 20419

in accordance with 5 C. F. R. 1201.114 of the Board's regulations. The parties should note that they are required to serve any petition for review and any subsequent pleading on all parties.

For additional information, see5 C.F. R. 1201. 114. The petition for review must be filed on or before March 13, 1987, and must set forth objections to the initial decision, supported by reference to applicable laws, regulations, and the record.

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[2] On July 10, 1986, the Board republished its entire rules of practice and procedure in the Federal Register. For ease of reference, citations will be to the Board's regulations at 5 C. F. R. Part 1201. However, parties should refer to 51 Fed. Reg. 25146-72 (1986) for the text of all references to this part.

Any appellant adversely affected or aggrieved by a final decision of the Board may file a petition with the United States Court of Appeals for the Federal Circuit, if the Court has jurisdiction. 5 U. S. C. 7703. A petition may not be filed while the case is pending before the Board. To be timely, the petition for judicial review must be recieved by the Court within thrity days after the Board's decision becomes final. Petitions must sent to:

U. S. Court of Appeals for the Federal Circuit

717 Madison Place, N.W.
Washington, D. C. 20439

FOR THE BOARD:

DUPREE P. HEARD /s/
Administrative Judge

APPENDIX H-23

TURKS V. U.S. POSTAL SERVICE
MSPB DOCKET NO. SL07528710028

CERTIFICATE OF SERVICE

I hereby certiify that copy of the foregoing Initial Decision was sent this date, by regular mail to the following parties:

Mr. Ray Turks, Jr.
1123 Angelica
St. Louis, Missouri 63107

Mr. Stanford Richardson, Jr.
Attorney at Law
2616 N. Kingshighway
St. Louis, Missouri 63113

Mr. Donald L. Baker
U. S. Postal Service
1720 Market Street, Room 2073
St. Louis, Missouri 63155-9401

Office of Personnel Management
ATTN: Appellate Policies Brsnch
1900 E. Street, N. W. - Room 7635
Washington, D. C. 20415

February 6, 1987
(date)

KIMBERLY PETERMEYER /s/
Legal Clerk

APPENDIX I

(2) RSpeed:436-4419:92-A15

July 25, 1986

SUBJECT: Notice of Charges - Removal

To: Ray Turks, Jr. SSN 429-48-9366
Tractor Trailer Operator
1123 Angelica
St. Louis, Mo. 63107

Certified Mail #P240314301
Return Receipt Requested

This is advance written notice that is is prosped to remove you from the Postal Service effective no sooner than thirty (30) days from your receipt of this notice. The reasons for this proposed action are:

You are a Tractor Trailer Operator assigned to duties at the Vehicle Maintenance Facility, St. Louis, Mo. Anessential requirement of your position is the safe and proper operation of assigned vehicles and the proper and accurate reporting of accidents. You are also required to be alert and physically ready to perform your duties.

You reported, on PS Form 91, and verbally to me, that you left the AMF at approxinately 12:30, on July 5, 1986, and headed east on I-70. You reported that at the West Florissant overpass someone dropped some stones from the overpass causing damage to the vehicle. On July 6,1986, when I questioned you about the damage to the bumper, the front and top of the truck you stated that stone were dropped from the West Florissant overpass and that was all you knew.

On July 7, 1986, at approximately 12:30, Supervisor S. A. Hopkins and Vehicle Operations Analyst Donald Taylor accompained you

to the alleged accident location. You could not pinpoint where the accident had happened. You then changed your story claiming that the accident occurred at the Taylor Avenue overpass. There was no sign of an accident having happened at that location.

Mr. Hopkins and Mr. Taylor did find evidence of an accident that matched the fact circumstances of the damage caused to your vehicle. This accident was at I-70 and Hanley. You denied having had an accident at that location. After being advised of the unlikelihood of your account of the accident, you submitted a written statement dated July 7, 1986, changing youraccout of the accident. In your written statement, you stated something or something hit you. You further stated that you did not know where it happened. You said you thought you were somewhere on Highway I-70.

When Ms Brenda Williams, RN, of the Main Post Office Medical Unit examined you on July 5, 1986, (the day of the accident) you were hostile and you smelled of alcohol.

The evidence at the accident location and the damage to your postal vehicle, is overwhelmingly convincing that you did run over the sign by the Hanley exit with your postal vehicle and that the report submitted by you is false. Your misconduct, that of having an accident that should have been prevented and your submission of a false report is very serious misconduct and is a violation of your duties and responsibilities as apostal employee as well as a violation of the Code of Ethical Conduct and the provisions of the M-52 Handbook.

As a preference eligible employee you have the following rights:

You and/or your representative may review the material relied on to support these reasons at the Main Office Garge, St. Louis, MO between the hours of 8:00 AM and4:00 PM, Monday through Friday. If you do not understand the reason for this notice, contact the undersigned for further information. You may answer this notice personally and in writing, or both, to Mr. Henry Voss, Manager, Fleet Operations, Room 210G, Main Office Garage, St. Louis, MO. 63155-9620 telephone number 436-4312 between the hours of 9:00 AM and 3:00 PM Monday through Friday and you may submit affidavits in support of your answer. If you are otherwise on official duty, you will be allowed a reasonable amount of official time to review the material relied on to support the reasons for this notice, to secure affidavits and prepare an answer to this notice. You will be allowed ten (10) calendar days from the date you receive this notice to submityour answer. Full consideration will be gien to any answer (s) you submit. As soon as possible after your answer (s) is received, or after the expiration of the 10-day limit, if you do not answer, you will be given a written decision.

You have the right to file a grievance under the Grievance-Arbitration Procedure set forth in Article 15, Section 2, of the National Agreement within fourteen (14) days of your receipt of this notice.

REGINALD SPEED /s/
Signature of Supervisor

STANLEY A. HOPKINS /s/
Reviewing Authority

bcc: Decision Maker named herein (send entire file).
Labor Relations (Room 2073)
Personnel (Room 2073)
ATAL (Mail Processing)
Tour Manager (Mail Processing)

APPENDIX I-4

PSDS
General Accounting
File

Foot Note: "WAS MAILED TO HIS HOME
ON AUGUST 7, 1986 SH /s/

APPENDIX J

(1) HVOSS: 436-4312:12-C30

September 12, 1986

SUBJECT: Letter of Decision

TO: Ray Turks, Jr.
1123 Angelica
St. Louis, Mo. 63107

Certified P312396563

On August 7, 1986, you were issued a notice proposing to remove you from the U. S. Postal Service based on the charge (s) outlined in the notice.

I have given consideration to your personal answer of August 26, 1986 and all other evidence of record. After listening to you and questioning you, I find that there are too many inconsistencies in your story. You did not know the location that you had your accident. You misquoted a private citizen, saying that he observed the accident. Investigation revealed the private party did not see the accident, which he stated to the analyst investigating the accident. It is without a doubt that it was not stones that broke the windshield of the vehicle. The nurse who saw you in the Medical Unit stated that you appeared to be under the influence of alcohol. Two days after the accident, you could not remember the accident, but you could remember being tired and dizzy. I find, however, that the charge-(s), as stated in the notice of Charges-Removal dated July 25, 1986 and mailed to you on August 7, 1986, are fully supported by the evidence and warrant your removal. The action will be effective September 29, 1986.

As a preference eligible, you have the right to appeal this decision in writing to Mr. Earl Witten, Regional Director, Merit Systems Protection Board, St. Louis Regional Office, 1520 Market Street, Room 1740, St. Louis, MO 63103, within 20 days from September 29, 1986.

APPENDIX J-2

If you appeal to the Merit Systems Protection Board, you should state whether you do or do not wish a hearing and you should furnish me a copy of your appeal. For further information on appeals procedure, contact the undersigned Henry C. Voss, Telephone 436-4312.
Attached for your reference are a copy of the Merit Systems Protection Board regulations and a copy of the appeal form.

If you appeal to the Merit Systems Protection Board you thereby waive access to any procedures under the National Agreement beyond Step 3 of the Grievance-Arbitation Procedure. If you appeal to the Merit Systems Protection Board, please provide me with copy of your appeal.

You are entitled to a representative of your own choosing throughout your appeal. You and your representative, if he or she is a U. S. Postal Service employee, shall be afforded a reasonable amount of official time for preparation of your case if you and/or your representative are otherwise in a in a duty status.

HENRY C. VOSS /s/
Manager, Fleet Operations
St. Louis, Mo. 63155-9721
Name of Higher Level Official (Printed)

Attachments: MSPB Rules and Regulations
MSPB Appeals Form